

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM LUCAS MCVEIGH,

Plaintiff,

v.

PIERCE COUNTY,

Defendants.

Case No. C23-5902 BHS

ORDER TO SHOW CAUSE

This matter comes before the Court on Plaintiff's motion for leave to proceed *in forma pauperis*. Dkt. 5. Plaintiff filed a proposed amended complaint, after the Court's first order to show cause. Dkts. 6, 7. Having reviewed Plaintiff's proposed amended complaint, the Court declines to grant Plaintiff's motion at this time. Plaintiff may, by January 10, 2024, either: (1) explain and show cause why the complaint should not be dismissed, or (2) file an amended complaint. If Plaintiff's proposed complaint does not comply with Federal Rule of Civil Procedure 8, the undersigned will recommend denial of Plaintiff's motion to proceed *in forma pauperis*.

DISCUSSION

A. Standard

The district court may permit indigent litigants to proceed IFP upon completion of a proper affidavit of indigency. See 28 U.S.C. §1915(a). The court has broad discretion in

1 denying an application to proceed IFP. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963),
2 *cert. denied* 375 U.S. 845 (1963).

3 The Court must subject each civil action commenced pursuant to 28 U.S.C. §
4 1915(a) to mandatory screening and order the *sua sponte* dismissal of any case that is
5 “frivolous or malicious,” “fails to state a claim on which relief may be granted,” or “seeks
6 monetary relief against a defendant who is immune from such relief.” 28 U.S.C. §
7 1915(e)(2)(B); *see also Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he
8 provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”); *Lopez v. Smith*,
9 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) “not
10 only permits but requires” the court to *sua sponte* dismiss an IFP complaint that fails to
11 state a claim). An IFP complaint is frivolous if “it ha[s] no arguable substance in law or
12 fact.” *Tripati v. First Nat'l Bank & Trust*, 821 F.2d 1368, 1369 (9th Cir. 1987) (citing
13 *Rizzo v. Dawson*, 778 F.2d 527, 529 (9th Cir. 1985); *see also Franklin v. Murphy*, 745
14 F.2d 1221, 1228 (9th Cir. 1984).

15 A *pro se* plaintiff’s complaint is to be construed liberally, but like any other complaint
16 it must nevertheless contain facts to support a claim for relief that may be considered
17 plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009) (citing *Bell Atlantic Corp. v.*
18 *Twombly*, 550 U.S. 544, 570 (2007)). A claim for relief is facially plausible when “the
19 plaintiff pleads factual content that allows the court to draw the reasonable inference
20 that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

21 Unless it is absolutely clear that no amendment can cure the defects of a complaint,
22 a litigant who is unrepresented by an attorney is entitled to notice of problems with the
23 complaint that would result in the case being dismissed, and an opportunity to amend

1 prior to dismissal of the action. See *Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th
2 Cir.1995). The Court is not required to grant an opportunity to amend the complaint
3 "where the amendment would be futile or where the amended complaint would be
4 subject to dismissal." *Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991).

5 B. Plaintiff's Proposed Complaint

6 Here, Plaintiff claims that Defendants Pierce County and several employees of
7 the Washington State Department of Social and Health Services ("DSHS") violated his
8 Fifth and Fourteenth Amendment rights. Dkt. 7 at p. 3. Plaintiff states that Pierce County
9 and DSHS have initiated proceedings for the taking of Plaintiff's real property without
10 due process or an offer of compensation.

11 The due process clause of the Fifth Amendment, states that no person shall be
12 deprived of life, liberty, or property, without due process of law. Plaintiff's Fifth
13 Amendment claim fails as a matter of law, because the Fifth Amendment due process
14 clause "only applies to the federal government." *Bingue v. Prunchak*, 512 F.3d 1169,
15 1174 (9th Cir.2008); see also *Castillo v. McFaddan*, 399 F.3d 993, 1002 n. 5 (9th
16 Cir.2005) ("[Plaintiff's] citation of the Fifth Amendment was, of course, incorrect. The
17 Fifth Amendment prohibits the federal government from depriving persons of due
18 process, while the Fourteenth Amendment explicitly prohibits deprivations without due
19 process by the several States."). Plaintiff names Pierce County, DSHS, and individual
20 employees of DSHS as defendants.

21 To the extent Plaintiff wishes to bring a Taking Clause claim through the
22 Fourteenth Amendment, Plaintiff must allege that his property was taken for public use
23 without just compensation. See *Ward v. Ryan*, 623 F.3d 807, 810 (9th Cir. 2010).

1 Specifically, Plaintiff must show “‘an independent source such as state law’ ... define[s]
2 the range of interests that qualify for protection as ‘property’ under the Fifth
3 and Fourteenth Amendments.” *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1030
4 (1992). Once a state-created property right is established, the Court must then
5 determine “whether [that] property right has been *abridged* improperly (taken without just
6 compensation) or whether a plaintiff has given up the right to assert such a claim.” See
7 *Vandervere v. Lloyd*, 664 F.3d 957, 963 (9th Cir. 2011).

8 Plaintiff, here, provides a lengthy narrative of his allegations, but the Court is not
9 able to decipher any particular acts of individuals that violated Plaintiff’s constitutional
10 rights. “[I]t is [P]laintiff’s responsibility to make each claim clear and provide only a short
11 statement of facts supporting [each] claim,” *Henderson v. Scott*, 2005 WL 1335220, at
12 *1 (E.D. Cal. May 4, 2005). Plaintiff will be allowed to file another proposed amended
13 complaint and if it complies with Federal Rule of Civil Procedure 8 and this Order, then
14 this case would potentially move forward.

15 CONCLUSION

16 Given the deficiencies addressed above, the Court will not grant Plaintiff’s
17 application to proceed *in forma pauperis* at this time. If Plaintiff chooses to file another
18 amended complaint, he is advised that an amended complaint supersedes (replaces)
19 the original complaint and, thus, the amended complaint must be complete in itself. See
20 *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir.
21 1989) (holding that “[t]he fact that a party was named in the original complaint is
22 irrelevant; an amended pleading supersedes the original”). Plaintiff’s amended
23 complaint must be filed by January 10, 2024, and must contain all claims, defendants,
24
25

1 and factual allegations that Plaintiff wishes to pursue in this lawsuit. Plaintiff's complaint
2 must comply with Federal Rule of Civil Procedure 8, which requires a complaint to
3 contain "a short and plain statement of the claim showing that the pleader is entitled to
4 relief." Fed. R. Civ. P. 8(a). "Each allegation must be simple, concise, and direct." Fed.
5 R. Civ. P. 8(d). If Plaintiff does not file any proposed amended complaint, or files a
6 proposed amended complaint that does not state a plausible claim for relief, then the
7 case will be dismissed without prejudice.

8 The Court further instructs the Clerk to re-note Plaintiff's motion to January 10,
9 2024.

10
11
12 Dated this 27th day of December, 2023.
13
14



15
16 Theresa L. Fricke
17 United States Magistrate Judge
18
19
20
21
22
23
24
25